KAREN P. HEWITT
United States Attorney
PAUL L. STARITA
Assistant U.S. Attorney
California State Bar No. 219573
CHRISTOPHER M. ALEXANDER
Assistant U.S. Attorney
California State Bar No. 201352
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-6507/7425
paul.starita@usdoj.gov
christopher.m.alexander@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GENARO SMITH-BALTHIER, Defendant.	Criminal Case No. 07CR3161-LAB GOVERNMENT'S TRIAL MEMORANDUM Date: January 8, 2008 Time: 9:00 a.m. Court: Hon. Larry A. Burns

COMES NOW the plaintiff, United States of America, by and through its counsel, Karen P. Hewitt, United States Attorney, and Paul L. Starita and Christopher M. Alexander, Assistant United States Attorneys, respectfully submit the following Trial Memorandum.

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I

STATEMENT OF THE CASE

A. INDICTMENT

After a failed disposition in Criminal Case No. 07CR1749-LAB, a federal grand jury in the Southern District of California returned a one-count Indictment charging defendant Genaro Smith-Baltiher ("Defendant") with being a deported alien found in the United States, in violation of Title 8, United States Code, Section 1326, on November 20, 2007. In the instant case, Defendant was arraigned on the Indictment on December 3, 2007, and entered a plea of not guilty.

B. TRIAL STATUS

Trial is scheduled for Tuesday, January 8, 2008, at 9:00 a.m., before the Honorable Larry A. Burns. The United States anticipates that its case-in-chief will last one day.

C. STATUS OF COUNSEL

Defendant is represented by Joseph M. McMullen, Esq., Federal Defenders of San Diego, Inc.

D. CUSTODY STATUS

Defendant is in custody.

E. INTERPRETER

The United States does not need an interpreter for any of its witnesses. The United States anticipates that Defendant may need an interpreter.

F. JURY WAIVER

Defendant has not waived trial by jury.

G. PRETRIAL MOTIONS

On December 3, 2007, the date of arraignment in the instant case, Defendant filed a motions to: (1) compel discovery, (2) dismiss the indictment due to misinstruction of the grand jury, and (3) grant leave to file further motions. At a motion hearing on December 3, 2007, in Criminal Case No. 07CR1749-LAB, the Court set a motion *in limine* hearing date of January 7, 2008, and set the case for trial on January 8, 2008, in the instant case. The Court ordered that any additional substantive motions, including any motion under 8 U.S.C. § 1326(d), and any motions *in limine* be filed in the normal course so that they may be heard on January 7, 2008.

H. STIPULATIONS

The Government and Defendant have not entered into any stipulations.

I. DISCOVERY

The United States has complied with its discovery obligations. Defendant has not provided any reciprocal discovery.

II

STATEMENT OF THE FACTS

A. THE INSTANT OFFENSE

On June 4, 2007, San Diego police officers arrested Defendant for disorderly conduct, being drunk in public, and booked him into the Central Detention Facility in San Diego, California. On June 5, 2007, Immigration Enforcement Agent Meraz encountered Defendant at the Detention Facility and conducted a field interview. During this interview, Agent Meraz determined that Defendant was a citizen and national of Mexico with no legal right to enter or remain in the United States. Subsequently, an Immigration detainer was placed on Defendant.

On June 6, 2007, at approximately 6:00 a.m., Defendant was referred to the custody of United States Immigration and Customs Enforcement. At this time, Deportation Officer Balangue performed records checks and confirmed Defendant's identity, that he is a citizen and national of Mexico, that he had been previously deported from the United States on numerous occasions, and that he had not applied for permission to re-enter the United States. Subsequently, Defendant was advised of his Miranda rights and he elected to invoke his right to counsel.

B. DEFENDANT'S IMMIGRATION HISTORY

Defendant is a citizen of Mexico. Defendant has been removed from the United States to Mexico on five occasions: (1) January 24, 1992, pursuant to an order of an immigration judge following a deportation hearing; (2) August 19, 1993, pursuant to an administrative order reinstating his 1992 order of removal; (3) June 13, 1995, pursuant to an administrative order reinstating his 1992 order of removal; (4) August 25, 1999, pursuant to an administrative order reinstating his 1992 order of removal; and (5) most recently, on July 31, 2006, pursuant to an order of an immigration judge following a deportation hearing.

C. DEFENDANT'S CRIMINAL HISTORY

Defendant has an extensive criminal and immigration history. While Defendant's criminal behavior began in 1982, the United States will only refer to felonies in the last ten years. Defendant was convicted on October 24, 1995 of selling a controlled substance, cocaine, and received four years in jail. On February 10, 1998, Defendant was convicted of illegal reentry in violation of 8 U.S.C. § 1326 (Criminal Case No. 98CR0165-T) for which he received 24 months in custody. Next, on November 4, 1999, Defendant was convicted of illegal entry in violation of 8 U.S.C. § 1325 (Criminal Case No. 99CR3068-GT) for which he received 30 months in custody. He most recently was convicted of false claim to United States citizenship in violation of 18 U.S.C. § 911 (Criminal Case No. 06CR0326-BTM) and was sentenced to 36 months in custody and one year supervised release to run concurrent to the sentence in Criminal Case No. 99CR3068-GT.

III

PERTINENT LAW

A. 8 U.S.C. § 1326 - DEPORTED ALIEN FOUND IN THE UNITED STATES

The United States must prove beyond a reasonable doubt that:

1. Defendant was deported from the United States;
2. After deportation, Defendant voluntarily entered the United States;
3. When Defendant entered he knew he was entering the United States or after Defendant entered the United States he knew that he was in the United States and knowingly remained;
4. Defendant was found in the United States without having obtained the consent of the Attorney General or the Secretary of the Department of Homeland Security to reapply for admission into the United States; and
5. Defendant was an alien at the time of his entry into the United States.

Committee on Model Criminal Jury Instructions - Ninth Circuit, Manual of Model Jury Instructions for the Ninth Circuit, §9.5B (West ed. 2003, modified January 2007); United States v. Salazar-Gonzalez, 458 F.3d 851 (9th Cir. 2006).

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IV

WITNESSES

The Government reserves the right to add, omit, substitute or change the order of witnesses. Presently, the Government may call the following witnesses during its case-in-chief:

1. Officer Brian McGilvray, City of San Diego Police Department
2. Deportation Officer Patricia Vargas, Department of Homeland Security
3. Deportation Office John Balangue, Department of Homeland Security
4. Immigration Enforcement Agent Jeremy Calcador, Department of Homeland Security
5. David Beers, Fingerprint Expert
6. Deputy Arturo Benavidez, County of San Diego Sheriff's Office
7. Deportation Officer Ramon Meraz, Department of Homeland Security

V

EXHIBIT LIST

The Government will provide a final exhibit list prior to trial. Presently, the Government may offer into evidence the following:

1. Order of Immigration Judge regarding Genaro Smith-Baltiher dated July 31, 2006.
2. Notice to Alien Ordered Removed/Departure Verification of Genaro Smith-Baltiher, File No. A20 738 629, Form I-296, dated July 31, 2006.
3. Warrant of Removal/Deportation of Genaro Smith-Baltiher, File No. A20 738 629, Form I-205, dated August 25, 1999.
4. Warrant for Deportation of Genaro Smith-Baltiher, File No. A20 738 629, Form I-205, dated June 13, 1995.
5. Warrant for Deportation of Genaro Smith-Baltiher, File No. A20 738 629, Form I-205, dated August 19, 1993.
6. Warrant for Deportation of Genaro Smith-Baltiher, File No. A20 738 629, Form I-205, dated January 25, 1992.
7. Fingerprint card bearing the name Genaro Smith-Baltiher dated September 25, 1999.
8. Fingerprint card bearing the name Genaro Smith-Baltiher dated February 22, 2002.
9. Fingerprint card bearing the name Genaro Smith-Baltiher dated June 5, 2007.
10. Fingerprint card bearing the name Genaro Smith-Baltiher dated June 6, 2007.

11. Certificate of Non-Existence regarding Genaro Smith-Baltiher and associated aliases.
12. Relevant portion of transcript from prior proceeding in Criminal Case No. 06CR0326-BTM.

VI

OTHER LEGAL ISSUES

All outstanding legal issues will be addressed at the motions *in limine* hearing scheduled for January 7, 2007.

VII

PROPOSED VOIR DIRE

1. Of those of you who have sat on criminal juries, did any of those juries fail to reach a unanimous verdict?
2. Has anyone had an unpleasant experience with any law enforcement personnel?
3. Has anyone had any disputes with any agency of the United States Government?
4. Does anyone have relatives or close friends who have been investigated, arrested, accused or charged with a crime?
5. Does anyone have relatives or close friends who have been deported or removed?
6. Does anyone have strong feelings about the United States Border Patrol or any other federal agency involved in immigration issues?
7. Does anyone believe that immigration laws are too harsh?
8. Does anyone believe everyone should be allowed to enter the United States?
9. Does anyone believe that it should legal to enter the United States without authorization?
10. Does everyone understand that as a juror your duty is to apply the law regardless of whether you disagree with it?
11. Does everyone understand that the laws of the United States equally apply to everyone who enters the United States?
12. Does everyone understand that as a juror you are not to consider prejudice, pity or sympathy in deciding whether the Defendant is guilty or not guilty?

13. Does anyone think that, regardless of the strength of the evidence, they will have trouble deciding whether the Defendant is guilty or not guilty?

14. Does anyone think they cannot decide whether a person is guilty or not guilty?

15. Does anyone have religious or moral beliefs which will make it difficult for them to make a decision strictly based on the law and facts of this case?

VIII

JURY INSTRUCTIONS

The United States will submit proposed jury instructions under separate cover. The United States reserves the right to submit additional instructions at the Fed. R. Crim. P. 30 conference.

DATED: January 2, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ ***Paul L. Starita***
PAUL L. STARITA
Assistant U.S. Attorney

/s/ ***Christopher M. Alexander***
CHRISTOPHER M. ALEXANDER
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. GENARO SMITH-BALTIHER, Defendant.	Criminal Case No. 07CR3161-LAB CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Paul L. Starita, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **GOVERNMENT'S TRIAL MEMORANDUM** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Joseph M. McMullen, Esq.
   Federal Defenders of San Diego, Inc.
   joseph_mcmullen@fd.og

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 2, 2008.

/s/ ***Paul L. Starita***
PAUL L. STARITA
Assistant U.S. Attorney